

**Minutes
Public Hearing
of the
Louisville Metro Air Pollution Control Board
November 19, 2008**

A public hearing of the Louisville Metro Air Pollution Control Board was called to order November 19, 2008, at 10:00 a.m. in the Board Room of the Louisville Metro Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky, by the Chairman, Dr. Robert Powell.

General Statement, Rules and Purpose

The Chairman read the opening announcements, rules and purpose of the Public Hearing, which was to review a proposed Agreed Board Order.

1. Agreed Board Order with Swift Pork Company d/b/a Swift & Company

Ms. Phelps, Enforcement Manager, reviewed an Agreed Board Order alleging that Swift & Company (Swift) violated District regulations and its permit, and it directs Swift to pay an administrative penalty and to take corrective action. The Company has agreed to the terms of the order.

Ms. Phelps said that Swift owns and operates an animal rendering plant pursuant to a District operating and construction permit. The District alleges that Swift failed to control objectionable odors, conduct required monitoring and recordkeeping, to notify the District of excess emissions, and to comply with certain requirements of its risk management program.

Ms. Phelps stated that earlier this year, the District required Swift to contract with an independent consultant to conduct an odor control study and to submit an odor control plan. Swift hired a consultant which proposed a number of measures to control odors from its processors, including the installation of new equipment, modifications, upgrades and repairs to existing equipment and systems, and improvement to the operating parameters and monitoring of the equipment. Ms. Phelps said that some of the corrective measures have been accomplished and are included in the compliance schedule on page 3 of the proposed Agreed Board Order, and some records are being required by the revised operating permit that will be issued to Swift in the near future.

Ms. Phelps reported that 8-9 months after the final upgrades to the plant have been made, Swift will again hire an independent consultant to review the operation of the plant and report to the District on its conclusion of the adequacy of the upgrades. In addition to these measures to control odors, Swift has corrected other compliance problems by submitting or resubmitting required documentation of compliance with its permit and its management program.

Ms. Phelps stated that Swift has agreed to pay an administrative penalty of \$47,800. Ms. Phelps said the District recommends that the Board adopt the Agreed Board Order as proposed.

Public Comment

Ms. Phelps stated that during the public comment period, the Board received comments from 22 citizens most of whom identified themselves as residents or business owners in the Butchertown neighborhood. She said that all of the public comments were complaints that the frequent and obnoxious odors from the Swift facility impaired commentor's quality of life. The commentors called upon the Board and the District to take aggressive action to require compliance from Swift.

Statements

Dr. Powell asked if a representative from Swift was present and wanted to make a statement. Mr. Dennis Conniff, attorney for Swift, stated that company representatives were present but declined to make a statement.

Jim Segrest, a resident who lives at 1607 Frankfort Avenue, made a statement on behalf of Andy Cornelius who is president of the Butchertown Neighborhood Association. Mr. Segrest said the association thanked the Board for imposing the fine for Swift's disregard of the District's regulations but felt the fine itself was not enough since Swift's actions not only impact the personal health and well being of the surrounding residents and businesses in Butchertown, but also the growth and revitalization of downtown. The association encouraged the District to take additional enforcement actions against Swift.

Mark Prussian, CEO of the Eye Care Institute located at 1536 Story Avenue in Butchertown, commented that he felt that Swift's fine was too lenient based on their failure to comply with District regulations over a five year period. Mr. Prussian said his business has installed air scrubbers and has the heating/cooling system serviced every other month in order to reduce odors for his staff, clients and vendors. He stated that since his business has been located in Butchertown for approximately three years, he has spent more than \$10,000 to combat odors from Swift. Mr. Prussian asked the Board if Metro Government could request the District to enforce the odor laws that exist.

Recess

Dr. Powell asked the Board to consider a motion to recess the public hearing for 5-10 minutes in order to review the written public comments that were distributed at the Board meeting.

Motion: Ms. Biemer moved that the Board recess 5-10 minutes to review the written public comments before proceeding with the public hearing.

All approved. The motion passed.

Discussion

Immediately following the recess, the Board reconvened. Dr. Powell asked Ms. Phelps how the proposed administrative penalty was calculated. Ms. Phelps responded the fine is one that is typically assessed against companies for this type of non-compliance and takes into account when the company is expected to come into compliance. She said the company has

taken measures that the District required of them to come into compliance. Ms. Phelps stated Swift has informed the District that they will set aside \$250,000 to complete the compliance projects that are required by the Board Order. She said the District's interest is focused on what Swift will do to correct the problem. Ms. Phelps stated that if Swift does not comply with the Board Order, future fines will be assessed at a higher rate.

Dr. Al-Shami asked if the fine is based on the number of violations or the degree of violations. Ms. Phelps stated the fine is based on the number of violations documented by District compliance officers which is fewer than the times the odors have been reported in the neighborhood. She stated the District does not have a numerical standard to measure odor. She also stated the state does have a numerical standard, but it is very difficult to document violations using the standard.

Ms. Smith asked whether based on the number of years that Swift has received violations, if the District had calculated what the amount would have been, had they been ordered to pay for each violation over the course of the years in question. Also, she asked if Swift has paid any violations over the past five years. Ms. Phelps responded the amount of the violations during the past five years would be the amount currently assessed, and Swift has paid fines for violations in 2002, 2003, 2004 and 2006.

Ms. Ruffin asked if the District was aware of what it would cost Swift to come into compliance. Ms. Phelps said that Swift has not presented the approximate cost of compliance to the District but the company has stated they expect to spend \$250,000 on upgrades. Ms. Phelps said the District believes that Swift could have considered some more expensive controls which they did not propose. Also, Ms. Phelps said that Swift has been informed that the upgrades in the Board Order are the initial steps to come into compliance, and the District will recommend additional upgrades next year. Ms. Ruffin asked if there will be a noticeable decrease in odors in phase one of the compliance plan. Ms. Phelps stated there should be noticeable improvement in the emission of odors.

Mr. Thomas inquired about Swift declining to make a statement at the public hearing. As a result, Mr. Dennis Conniff, attorney representing Swift in this matter, made a statement on behalf of the company. He said Swift primarily wants the public to know they have, over a period of time, engaged in a broad range of discussions with the District on what Swift can do to improve their odor emissions. Mr. Conniff stated the company has already implemented a number of improvements that can be done without permit changes. He said the company agreed with the results of a third party study and has assessed all of the existing controls to address odor, has made recommendations on how operating improvements can be made to the equipment, and has recommended new equipment that could be installed to better control odor. The consultant made other recommendations, all of which Swift has agreed to implement based on the Board Order. Mr. Conniff said that Swift does not know the exact cost of the upgrades but expects to spend a minimum of \$250,000. Also, he asked the Board to approve the proposed Agreed Board Order.

Ms. Smith asked Mr. Conniff if he knew what the stricter controls were that Ms. Phelps mentioned that Swift elected not to implement. Mr. Conniff said he was not directly involved in the equipment discussions, but Swift did agree to the all of recommendations made by the third party consultant. Ms. Smith also asked if the consultant gave Swift a projection on odor

emissions and reductions that would be achieved for 100% implementation. Mr. Conniff and Ms. Phelps stated there isn't an accurate way to measure the odor and emissions reductions. Ms. Phelps stated the District has a nasal ranger which is an advanced device similar to the scentometer that the state uses. However, the equipment isn't effective because the District's odor standard is based on factors such as how long the odor has been present, how strong is it, and how many complaints were made. In addition, assigning a numerical standard to odors is not part of the District's regulations. She said the District's odor regulation requires that odors from a facility stay contained to the facility, not drift into surrounding areas, and remain at a comfortable level for surrounding residents and businesses.

Ms. Anderson stated the state receives very few complaints about odors and virtually does not take enforcement actions on violators. She said a large majority of the complaints the Districts receives are about odors. Ms. Anderson added that the District's compliance officers are very experienced in responding to and investigating complaints and are trained to document the nature, location, duration and intensity of an odor. In addition, the District's regulation is a comprehensive approach to regulate odors in an urban area.

Dr. Al-Shami asked if the District investigates complaints received during non-working hours. Ms. Anderson said the District does not have revenue to investigate complaints after normal work hours.

Mr. Jacob asked when the construction permit for Swift will be completed in order for them to move forward with five major modifications at the plant. Ms. Anderson stated she is not sure when the permit will be issued, but it will be a priority since it will have an immediate impact on the public.

Mr. Segrest, Butchertown resident, asked why the Swift plant pollutes the offensive odors in the early a.m. hours. Ms. Anderson stated the operational changes at Swift will be in effect at the plant during all three shifts and should reduce offensive emissions.

Adjournment

The public hearing adjourned at 10:42 a.m.

Robert W. Powell, M.D.
Chairman

Joseph E. Schweinhart
Secretary-Treasurer